Supreme Court, U.S.
FILED
JUN 24 1992
OFFICE OF THE CLERK

(3)

No. 91-1862

In The

Supreme Court of the United States

October Term, 1991

DAVID GANTT, *et al.*,

Appellants,

v.

DEAN SKELOS, *et al.*,

Appellees.

On Appeal From The United States District Court For The Eastern District Of New York

SUGGESTION OF MOOTNESS

CHARLES J. COOPER
(Counsel of Record)
MICHAEL A. CARVIN
ROBERT J. MCAULIFFE
SHAW, PITTMAN, POTTS & TROWBRIDGE
2300 N Street, N.W.
Washington, D.C. 20037
(202) 663-8000

GREGG M. MASHBERG
PROSKAUER ROSE GOETZ & MENDELSOHN
1585 Broadway
New York, New York 10036
(212) 969-3000

Attorneys for Appellees Dean Skelos, Ralph Marino and the Senate of the State of New York

BEST AVAILABLE COPY

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

LIST OF PARTIES

DAVID GANTT, individually and as Co-Chairman of the Legislative Task Force on Demographic Research and Reapportionment; SAUL WEPRIN, Speaker of the Assembly of the State of New York; and THE ASSEMBLY OF THE STATE OF NEW YORK, ASQUITH REID, MORTON M. AVIGDOR, VIVIAN BRIGHT, BERNARD FREILICH, CORINNA GRANT, LARAINE A. GRANDE, LORRELLE HENRY, and LUIS OSORIO, each a voter in the State of New York; and GARY L. ACKERMAN, FLOYD H. FLAKE, THOMAS J. MANTON, MAJOR R. OWENS, CHARLES B. RANGEL, CHARLES E. SCHUMER, and STEPHEN J. SOLARZ, each individually as a voter in the State of New York and as a Member of the U.S. House of Representatives,

Appellants,

DEAN SKELOS, Co-Chairman of the New York State Legislative Task Force on Demographic Research and Reapportionment; NEW YORK STATE TASK FORCE ON DEMOGRAPHIC RESEARCH AND REAPPORTIONMENT; RALPH MARINO, Majority Leader of the New York State Senate; MARIO CUOMO, Governor of the State of New York; THE SENATE OF THE STATE OF NEW YORK; STANLEY LUNDINE, Lieutenant Governor of the State of New York; THE BOARD OF ELECTIONS OF THE STATE OF NEW YORK; RONALD STARKWEATHER, Individually and as Commissioner of the Board of Elections of the County of Monroe; M. BETSY RELIN, Individually and as Commissioner of the Board of Elections of the County of Monroe; PUERTO RICAN LEGAL DEFENSE AND EDUCATION FUND, INC.; EVELYN CORCHARDO and MICHAEL T. WARING,

Appellees.

STATEMENT

Appellees file this memorandum to advise the Court of certain facts that, in appellees' view, render this case moot.

The questions that appellants David Gantt, *et al.*, raise on this appeal are twofold:

1. Whether the three-judge district court below erred in declining to abstain from adjudicating an apportionment dispute over congressional redistricting in which there are no disputed issues of state law; and

2. Whether the three-judge district court below, having declined to abstain, erred in enjoining a state court from adjudicating the same apportionment dispute over congressional redistricting.

Appellees believe that these questions have been mooted by intervening events and by appellees' voluntary withdrawal of their motion filed with the three-judge court below to enjoin the state court from adjudicating the congressional redistricting case pending before it.

On May 5, 1992, the three-judge district court issued an order denying appellants' abstention motion and granting appellees' motion to enjoin all parties and counsel from proceeding in the action entitled *Reid, et al. v. Marino, et al.*, No. 9567/92, pending in the Supreme Court of the State of New York for the County of Kings (the "State Court Action") (the three-judge federal court's Memorandum and Order of May 5, 1992, is reprinted in Appellants' Appendix at App. 1a-10a). Two days later, appellants filed in this Court an application for stay

pending appeal of the three-judge federal court order. On May 13, 1992, on a reference from Justice Thomas, this Court entered an order staying the portion of the lower court's order that enjoined the parties and counsel from proceeding in the State Court Action.

The State Court Action proceeded, and on June 1, 1992, the court-appointed panel of referees submitted to the court a preliminary report including a proposed congressional reapportionment plan. After a hearing on June 5, 1992, the state court found the plan submitted by the referees to be complete and valid under the Constitutions of the United States and the State of New York, as well as the Federal Voting Rights Act. *See* Order and Judgment of Supreme Court of the State of New York for the County of Kings dated June 8, 1992 (Appendix 001). The state court adopted the plan in its entirety as the congressional reapportionment plan for the State of New York (the "State Plan"). *Id.*

On June 8, 1992, the New York State Senate approved a bill adopting the State Plan, and on June 9, 1992, the New York Assembly enacted the same bill. Both bills were signed by Governor Cuomo on June 12, 1992. The State Plan was submitted to the United States Department of Justice for preclearance under Section 5 of the Voting Rights Act on June 17, 1992.

Meanwhile, the three-judge district court also continued to adjudicate the congressional redistricting case before it. On May 27, 1992, the court appointed special master, after conducting a hearing, submitted a proposed congressional reapportionment plan and report to the district court. On June 11, 1992, after a hearing on June 3,

1992, the district court issued an order adopting the special master's proposed plan as a lawful and proper apportionment of New York's congressional districts (the "Federal Plan"). *See* Order of three-judge federal court dated June 11, 1992 (Appendix 013). Also in its June 11, 1992 Order, however, the district court directed that the Federal Plan would be implemented only if the State Plan did not receive preclearance under Section 5 of the Voting Rights Act by the United States Department of Justice by July 8, 1992.

Because the State Court Action has now been fully adjudicated, the question whether the three-judge district court erred on May 5, 1992, in enjoining the State Court Action has become moot.[1]

In recognition of these facts, appellees filed a motion on June 19, 1992, in the three-judge district court to withdraw their earlier motion to enjoin the State Court Action. *See* Defendants Marino, Skelos, and the New York State Senate's Motion to Withdraw Their Motion for an Order Enjoining the State Court Proceedings (in the form of an Order to Show Cause and Affidavit) (Appendix 018). Appellants have agreed not to oppose this motion. The three-judge federal court's granting of the motion to withdraw will remove the order challenged in this

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[1] We note that plaintiffs-appellees Puerto Rican Legal Defense and Education Fund, Inc. and Evelyn Corchado agree that this appeal has been mooted because the State Court Action has been fully adjudicated. *See* Plaintiffs-Appellees Puerto Rican Legal Defense and Education Fund, Inc. and Evelyn Corchado's Motion to Dismiss Appeal and to Affirm Ruling of the Trial Court at 1-3.

appeal. Consequently the questions presented by this appeal are moot.

For these reasons, appellees suggest that the issues sought to be raised are moot and that the appeal should be dismissed, that the three-judge district court's order enjoining the State Court Action should be vacated, and that the cause should be remanded to the three-judge district court with directions to dismiss the order enjoining the State Court Action. *See Great Western Sugar Co. v. Nelson*, 442 U.S. 92, 93-94 (1979); *United States v. Munsingwear Corp.*, 340 U.S. 36, 39-41 (1950).[2]

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[2] With respect to the three-judge district court's decision *not* to abstain from exercising jurisdiction, *see* the three-judge federal court's Memorandum and Order of May 5, 1992, reprinted in Appellants Appendix at App. 1a-10a, that order is not immediately appealable. *Gulfstream Aerospace Corp. v. Mayacamas Corp.*, 485 U.S. 271 (1988) (a district court order denying a motion to stay or dismiss an action where a similar suit is pending in state court is not immediately appealable under 28 U.S.C. § 1291 nor under 28 U.S.C. § 1292). Consequently, an appeal of that decision is not properly before the Court.

Dated: June 19, 1992

Respectfully submitted,

/s/ Charles J. Cooper
CHARLES J. COOPER
(Counsel of Record)
MICHAEL A. CARVIN
ROBERT J. MCAULIFFE
SHAW, PITTMAN, POTTS &
TROWBRIDGE
2300 N Street, N.W.
Washington, D.C. 20037
(202) 663-8000

GREGG M. MASHBERG
PROSKAUER ROSE GOETZ &
MENDELSOHN
1585 Broadway
New York, New York 10036
(212) 969-3000

Attorneys for Appellees
Dean Skelos, Ralph Marino
and the Senate of the
State of New York

APPENDICES

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

----------X

ASQUITH REID, et al.,

Plaintiffs,

vs.

RALPH J. MARINO, et al.,

Defendants.

----------X

Index No. 9567/92

NOTICE OF ENTRY

PLEASE TAKE NOTICE that the annexed is a true and accurate copy of the foregoing Order and Judgment duly entered in the above-captioned action and filed in the office of the Clerk of the County of Kings on June 9, 1992.

Dated: New York, New York
June 10, 1992

PAUL, WEISS, RIFKIND,
WHARTON & GARRISON
1285 Avenue of the Americas
New York, New York 10019
(212) (373-3000)

Attorneys for Plaintiff

TO: Parties on Attached Service List

MEMORANDUM

SUPREME COURT COUNTY

ASQUITH REID, et al Plaintiffs, vs. RALPH J. MARINO, et al. Defendants.	By SHAW J.S.C. Dated June 8, 1992 Order and Judgment Index #9567/92

Earlier this year when the New York State legislature failed to enact a congressional reapportionment plan reducing the number of congressional seats from 34 to 31 and then creating 31 districts equal in population based on the 1990 census, several lawsuits were commenced requesting the judiciary to adopt a redistricting plan. Two suits were instituted in different Federal District Courts of New York State and consolidated before a 3-judge panel in the Eastern District of New York. Another such action was begun in the Supreme Court, Kings County and assigned to this Justice.

The commencement of this action was accompanied by an order to show cause in which the plaintiffs requested certain injunctive relief. At oral argument of the motion on April 24, 1992, this court dictated a decision and order into the record holding that if the New York State Legislature failed to enact a reapportionment plan by May 4, 1992, the court would undertake this task. The parties where therefore instructed to submit to the court their proposed congressional redistricting plans

and accompanying supporting documents and names of proposed independent experts to serve as referees. The decision and order further provided, however, that if at any time during the course of these proceedings a congressional reapportionment plan were validly enacted by the legislature, the court would entertain an application to dismiss this action.

On May 4, 1992, this court was advised by the attorneys for the parties that the legislature had taken no action with respect to congressional reapportionment, and as of this writing had still not enacted any such plan. This court therefore issued a decision and order the following day, May 5, in which it retained jurisdiction and assumed responsibility, which the legislature had abdicated by their inaction, for the adoption of a congressional redistricting plan, and appointed a panel of three referees pursuant to CPLR 4001, 4201 et seq and 4311 et seq to assist the court in this undertaking. The referees were to hear and report, and submit to this court on or before May 26, 1992 a complete and valid reapportionment plan for the congressional districts of the State of New York. In a subsequent decision and order dated May 14, 1992, a substitution was made for one of the referees. The panel of referees, to whom the court and the People of this State are now indebted for their distinguished public service, consisted of:

Hon. Vincent A. Delorio (nominated by the parties)

Dean Frank J. Macchiarola (nominated by the parties)

Hon. Philip D. Roache (designated by the court)

Prior to the substitution of one of the referees, the 3-judge federal panel in the Eastern District of New York, issued a preliminary injunction enjoining the parties in that lawsuit from proceeding any further in the action before this court. That decision was appealed to the United States Supreme Court which issued a stay of the injunction, allowing this court to proceed. The United States Supreme Court has not yet ruled on the merits of the District court's issuance of the preliminary injunction or its denial of a motion to abstain from accepting jurisdiction over reapportionment in favor of the State Court proceeding.

The referees in this matter submitted a preliminary report to this court on June 1, 1992; copies were distributed immediately to the parties and a preliminary hearing held on June 2, 1992. The final, unanimous report was distributed on June 4, and a hearing held on June 5.

At the June 5th hearing, all parties and subsequent intervenors were given an opportunity to comment on the merits of the redistricting plan proposed by the referees. The court recognizes that no reapportionment plan can be perfect in every detail, and none can be drawn that will be satisfactory to everyone. However, upon listening to all of the comments and suggestions on various aspects of the plan, and based upon the court's own examination of the proposed plan, the court finds the plan submitted by the referees to be complete and valid under the constitutions of the United States and the State of New York as well as the Federal Voting Rights Act. The court further concludes that this plan is the only one presently before any court that fully comports with these requirements and other applicable criteria as set forth in the referees'

report. The court adopts the plan in its entirety, unchanged, as the Congressional Reapportionment Plan for the State of New York and hereby promulgates and establishes it to govern the election of Members of Congress at the November 1992 election and subsequent elections. The final report of the referees, embodying this plan, together with all its appendices is annexed to and made a part of this decision and order.

It is further ordered that the defendant New York State Board of Elections, in accordance with its statutory duties, shall forthwith implement the terms of the court's redistricting plan as set forth in the appendix to this decision.

The legislature's failure to perform its statutorily mandated duty in a timely fashion has required the court to appoint referees, who are to be compensated for their labor. The referees have incurred expenses in developing a valid congressional reapportionment plan and have employed various personnel to assist them in completing this task. Therefore, an appropriate order will be entered taxing costs against the legislative defendants for the referees' fees and expenses, the fees and expenses of the experts retained by them and their staff as well as the printing, computer and miscellaneous charges incurred in the production of the referees' report. The referees shall submit an itemization of these fees and expenses forthwith.

Jurisdiction over this matter is retained for the purpose of making any further orders deemed necessary to ensure the effectuation of this decision and order.

The foregoing constitutes the decision order and judgment of the court and the clerk of this court is instructed to enter this order and judgment forthwith.

ENTER,

/s/ James H. Shaw
J.S.C.

CERTIFICATE OF SERVICE

I, Nicole L. Felton, do hereby certify that the foregoing Notice of Entry was served upon the parties on the attached service list in the manner specified on the attached service list on this 10th day of June 1992.

/s/ Nichole L. Felton
Nicole L. Felton, Esq.

Service List

The Honorable George C. Pratt (By Fed. Ex.)
U.S. Courthouse
Uniondale Avenue at
Hempstead Turnpike
Uniondale, New York 11533

The Honorable John S. Martin, Jr. (By Fed. Ex.)
U.S. Courthouse
40 Foley Square
New York, New York 10007

The Honorable Sterling Johnson, Jr. (By Fed. Ex.)
U.S. Courthouse
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Arthur A. Baer, Esq. (By Hand)
Puerto Rican Legal Defense and
Education Fund
99 Hudson Street
New York, New York 10013
(Counsel for federal court
plaintiffs)

Joel Graber, Esq. (By Hand)
Assistant Attorney General
120 Broadway
New York, New York 10271
(Counsel for Cuomo, Lundine
and the Board of Elections)

C. Daniel Chill, Esq. (By Hand)
Graubard, Mollen, Horowitz,
Pomeranz & Shapiro
600 Third Avenue, 33rd Floor
New York, New York 10016-1903
(Counsel for Saul Weprin,
David Gantt and the New York
State Assembly)

Gregg M. Mashberg, Esq. (By Hand)
Proshauer Rose Goetz & Mendelsohn
1585 Broadway
New York, New York 10036
(Counsel for Marino, Skelos and
the New York State Senate)

Charles J. Cooper, Esq. (By Fed. Ex.)
Shaw, Pittman, Potts & Trowbridge
2300 N. Street, N.W.
Washington, D.C. 20037
(Counsel for Marino, Skelos and
the New York State Senate)

Defendant The New York State Board of Elections
Commerce Plaza
P.O. Box 4
Albany, New York 12260 (By Mail)

Eugene F. Pigott, Jr., Esq.
Offerman, Mahoney, Cassano, Pigott, Greco & Whalen
1776 Statler Towers
Buffalo, New York 14202
(Counsel for federal court plaintiff Michael T. Waring) (By Mail)

Ronald Starkweather
Commissioner of the Board of Elections
County of Monroe
39 West Main Street
Rochester, New York 14614 (By Mail)

M. Betsy Relin
Commissioner of the Board of Elections
County of Monroe
39 West Main Street
Rochester, New York 14614 (By Mail)

Stanley Kalmon Schlein, Esq.
Whitman & Ransom
200 Park Avenue
New York, New York 10166
(Counsel for Nita Lowey) (By Hand)

Paul Wooten, Esq.
214 Jefferson Avenue
Brooklyn, New York 11216
(Counsel for Congressman Major R. Owens, Karl B. Morgan and Penelope Fujiko Willgrodt) (By Mail)

Judith Reed, Esq. (By Hand)
NAACP Legal Defense and
Education Fund, Inc.
99 Hudson Street, Suite 1600
New York, New York 10013
(Counsel for NYS African-
American Political Action
Committee, Linda Breckenridge,
Isaiah Thomas, Mary Murphy,
Leroy Sawyer and Vivian Bright)

Nathan Lewin, Esq. (By Mail)
Miller, Cassidy, Marroca & Lewin
2555 M Street, N.W.
Washington, D.C. 20037
(Counsel for Council of
Jewish Organizations of Boro Park,
United Jewish Organizations of
Williamsberg, Rabbi Bernard Freilich
and Adam Veneski)

David A. Barrett, Esq. (By Hand)
Duker & Barrett
90 Broad Street
New York, New York 10004
(Counsel for Madison Homeowners
Association, et al.)

E. Thomas Boyle, Esq. (By Mail)
Boyle, Shea, Nornes & Pines
1391 Veterans Memorial Highway
Hauppauge, New York 11788
(Counsel for James F. Gaughron)

Richard A. Palumbo, Esq. (By Mail)
Boylan, Brown, Code, Fowler,
Randall & Wilson
900 Midtown Tower
Rochester, New York 14604
(Counsel for Louise Slaughter)

Esmeralda Simons, Esq. (By Mail)
Dianne E. Dixon, Esq.
Center For Law and Social Justice
Medgar Evers College, CUNY
1473 Fulton Street
Brooklyn, New York 11216
(Counsel for Intervenors Majority
Coalition For Fair Reapportionment,
Celeste Morris, Edward L. Baca
and Tzylai Chang)

Kathleen L. Wilde, Esq. (By Hand)
American Civil Liberties Union
132 West 43rd Street
New York, New York, 10036

Christopher Hanson (By Hand)
IPR Redistricting Association
NYC Latino Voting Rights Committee
286 Fifth Avenue – Room 301
New York, New York 10001

Armando Montano, Esq. (By Mail)
1217 Castle Hill Avenue
Bronx, New York 10462
(Counsel for the NYC Latino
Voting Rights Committee)

Roy Smith, Esq. (By Mail)
384 East 149th Street
Bronx, New York 10455
(Counsel for African-American
Legal Defense and Education
Fund, Neva Shillingford and
James Rickens)

Congressman Gary L. Ackerman (By Mail)
U.S. House of Representatives
238 Cannon House Office Building
Washington, D.C. 20515

Pro Se

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

PUERTO RICAN LEGAL DEFENSE AND EDUCATION FUND, INC., and EVELYN CORCHARDO,

Plaintiffs,

- against -

DAVID GANTT, *et al.*,

Defendants.

92-CIV-1521(SJ)

ORDER

(Filed June 11, 1992)

MICHAEL T. WARING,

Plaintiff,

- against -

DAVID GANTT, *et al.*,

Defendants.

92-CIV-1776(SJ)

On June 3, 1992, this three-judge court heard objections to an argument concerning the congressional redistricting plan submitted by Special Master Frederick B. Lacey. On that date, respective counsel for the senate majority and for the assembly majority both represented to us that by Wednesday, June 10, 1992, the legislature would approve (1) a congressional redistricting plan other than the one submitted by the Special Master, and (2) an amendment to the New York Election Law that would provide, *inter alia*, that the process of gathering signatures on designating petitions shall begin on July 9,

1992, rather than June 9, 1992. *Compare* N.Y. Elec. Law §§ 6-134(6) *and* 6-158(1) (*McKinney* Supp. 1992).

This court indicated, on June 3, 1992, that it would, soon after June 10th, enter an appropriate order with respect to the interrelationship between, and effect of, the Special Master's plan and the state plan.

Both houses of the state legislature have now approved a bill adopting a reapportionment plan and a bill adopting the promised changes in the election laws. Both bills have now been signed by the governor.

"A decree of the United States District Court is not within reach of Section 5 of the Voting Rights Act", *Conner v. Johnson*, 402 U.S. 690, 691 (1971) (*per curiam*), thus, preclearance of the Special Master's plan by the Department of Justice is not required. However, a legislatively-approved plan requires preclearance by the Department of Justice, *see, e.g., McDaniel v. Sanchez*, 452 U.S. 130, 149 (1981). Of course, preclearance of the state plan may not occur, or it may be delayed. Since all parties agree that a redistricting plan must be in place before the signature-gathering process starts, so that candidates can know the boundaries of the districts they hope to represent, we hereby ORDER the following:

1. The Special Master's plan as submitted is hereby accepted and approved by this court as an appropriate and proper apportionment of New York's 31 congressional districts.

2. Subject to further order of this court, if the plan adopted by the state legislature, or some duly approved modification thereof is not in place, *i.e.*, both adopted as law in the State of New York and precleared, by 5:00 pm

on July 8, 1992, then the Special Master's plan shall operate as the plan for congressional districts for the State of New York for the 1992 elections.

A written opinion setting forth the court's reason for not holding any further hearings, for approving the Special Master's plan, and for conditionally establishing the Special Master's plan at this time will be filed in the near future.

In view of some of the issues raised by the parties' submissions to this court, we invite any interested parties to submit briefs, by June 19, 1992, on the issue of the extent to which, if at all, this court may and should pass on the legality of the state plan.

SO ORDERED:

/s/ George C. Pratt
GEORGE C. PRATT
United States Circuit Judge

/s/ John S. Martin, Jr.
JOHN S. MARTIN, JR.
United States District Judge

/s/ Sterling Johnson, Jr.
STERLING JOHNSON, JR.
United States District Judge

DATED: BROOKLYN, NEW YORK
JUNE 11, 1992

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

PUERTO RICAN LEGAL DEFENSE AND EDUCATION FUND, INC., AND EVELYN CORCHADO,

Plaintiffs,

-again-

DAVID GANTT, Co-Chairman of the New York State Legislative Task Force on Demographic Research and Reapportionment; DEAN SKELOS, Co-Chairman of the New York State Legislative Task Force on Demographic Research and Reapportionment; NEW YORK STATE TASK FORCE ON DEMOGRAPHIC RESEARCH AND REAPPORTIONMENT; SAUL WEPRIN, Speaker of the Assembly of the State of New York; RALPH MARINO, Majority Leader of the New York State Senate; MARIO CUOMO, Governor of the State of New York; STANLEY LUNDINE, Lieutenant Governor of the State of New York; THE SENATE OF THE STATE OF NEW YORK; THE ASSEMBLY OF THE STATE OF NEW YORK; THE BOARD OF ELECTIONS OF THE STATE OF NEW YORK,

92 CIV. 1521 (SJ)

Defendants.

ORDER TO SHOW CAUSE

MICHAEL T. WARING,

Plaintiff,

– against – 92 Civ. 1776

DAVID GANTT, Individually and as Co-Chairman of the Legislative Task Force on Demographic Research and Reapportionment; DEAN SKELOS, Individually and as Co-Chairman of the Legislative Task Force on Demographic Research and Reapportionment; THE NEW YORK STATE LEGISLATIVE TASK FORCE ON DEMOGRAPHIC RESEARCH AND REAPPORTIONMENT; THE SENATE OF THE STATE OF NEW YORK; THE ASSEMBLY OF THE STATE OF NEW YORK; THE BOARD OF ELECTIONS OF THE STATE OF NEW YORK; RONALD STARKWEATHER, Individually and as Commissioner of the Board of Elections of the County of Monroe; M. BETSY RELIN, Individually and as Commissioner of the Board of Elections of the County of Monroe,

Defendants.

_____X

UPON the annexed affidavit of Gregg M. Mashberg, sworn to June 19, 1992, and the exhibits thereto, including the decision and order of this Court dated May 5, 1992 pursuant to which counsel and the parties in the action pending in the Supreme Court of the State of New York,

County of Kings, captioned *Reid, et al. v. Marino et al.*, IAS Part 6, index no. 9567/92 (the "State Court Action") were enjoined from taking any further steps to prosecute the State Court Action, and the decision and order of this Court dated June 11, 1992 pursuant to which the congressional plan adopted by this Court will be implemented only if the State Legislature's plan fails to obtain preclearance under Section 5 of the Voting Rights Act from the United States Department of Justice by July 8, 1992, and all prior proceedings had herein, it is hereby

ORDERED, that the plaintiffs and defendants in this action and the State Court Action show cause before the Honorable Sterling Johnson, Jr., United States District Judge, United States Courthouse, Brooklyn, New York, on June 27, 1992 at 9:30 A.M., why an order should not be made and entered herein authorizing defendants Marino, Skelos and the New York State Senate to withdraw their April 21, 1992 motion to enjoin further proceedings in State Court Action, and for such other relief as the Court deems just and proper; and it is further

ORDERED, that service of this Order, and the papers upon which it is based, (i) on or before June 24, 1992 at 5:00 p.m., upon the following attorneys for the parties by hand:

Paul, Weiss, Rifkind, Wharton & Garrison
Attorneys for Plaintiffs in the State Court Action
1285 Avenue of the Americas
New York, New York 10019

Joel Graber, Esq.
Assistant Attorney General
Attorney for Mario Cuomo, Stan Lundine
and the Board on Elections in the State Court

Action and in the PRLDEF Action
120 Broadway
New York, New York 10271

Dan Chill, Esq.
Graubard, Mollen, Horowitz, Pomeranz & Shapiro
Attorneys for (i) defendants the Assembly of the State of New York, and Saul Weprin in the State Court Action and (ii) Defendants Gantt, the Assembly half of the New York State of Legislative Task Force on Demographic Research and Reapportionment, Saul Weprin, and the Assembly of the State of New York in the PRLDEF Action
600 Third Avenue
New York, New York 10016

Arthur A. Baer, Esquire
Puerto Rican Legal Defense and Education Fund
Attorney for the Plaintiffs in the PRLDEF Action
99 Hudson Street
New York, New York 10013

and (ii) on or before June 24, 1992 upon the following parties by mail:

Eugene F. Pigott, Jr., Esq.
Offerman, Mahoney, Cassano, Pigott, Graco & Whalen
1776 Statler Towers
Buffalo, New York 14202
(Counsel for plaintiff Michael T. Waring)

Stanley Kalmon Schlein, Esq.
Whitman & Ransom
200 Park Avenue
New York, New York 10166
(Counsel for Intervenor Nita Lowey)

Paul Wootan, Esquire
214 Jefferson Avenue
Brooklyn, New York 11216
(Counsel for Intervenors
Congressman Major R. Owens, Karl B. Morgan
and Penelope Fujiko Willgrodt)

Judith Reed, Esq.
NAACP Legal Defense and Educational
Fund, Inc.
99 Hudson Street, Suite 1600
New York, New York 10013
(Counsel for Intervenors NYS African-American
Political Action Committee, Linda Breckenridge,
Isaiah Thomas, Mary Murphy, Leroy Sawyer
and Vivian Bright)

Nathan Lewin Esq.
Miller, Cassidy, Larocca & Lewin
2555 M Street N.W.
Washington, D.C. 20037
(Counsel for Intervenors Council of Jewish
Organizations of Boro Park, United Jewish
organizations of Williamsberg, Rabbi Bernard
Freilich and Adam Veneski)

David Barrett, Esq.
Duker & Barrett
90 Broad Street
New York, New York 10004

E. Thomas Boyles, Esq.
Boyle, Shea, Nornes & Pines
1393 Veterans Memorial Highway
Hauppauge, New York 11788
(Counsel for Intervenor James F. Gaughran)

Richard A. Palumbo, Esquire
Boyland, Brown, Code, Fowler,
Randall & Wilson
900 Midtown Tower
Rochester, New York 14604
(Counsel for Intervenor Louise Slaughter)

Esmeralda Simmons, Esq.
Dianne E. Dixon, Esq.
The Center for Law & Social Justice
at Medgar Evers College, CUNY
1473 Fulton Street
Brooklyn, New York 11216
(Counsel for Intervenors Majority Coalition
For Fair Reapportionment, Celeste Morris,
Edward L. Baca
and Tzylai Chang)

American Civil Liberties Union
132 West 43rd Street
New York, New York 10036

shall constitute good and sufficient service thereof; and it is further

ORDERED, that this Order, and the papers upon which it is based, shall be delivered on or before June 24, 1992 at 5:00 p.m. upon the following:

The Honorable George C. Pratt
U.S. Courthouse
Uniondale Avenue at Hempstead Turnpike
Uniondale, New York 11533

The Honorable John S. Martin, Jr.
U.S. Courthouse
40 Foley Square
New York, New York 10007

and it is further

ORDERED, that all answering papers in opposition to the relief requested, shall be personally served upon Proskauer Rose Goetz & Mandelsohn, attorneys for defendants Marino, Skelos and the Senate of the State of the New York, 1585 Broadway, 17th Floor, New York, New York 10036, on or before 5:00 p.m. on June 26, 1992; and it is further

ORDERED, that all answering papers in opposition to the relief requested, shall be served by hand upon this judge and the following judges:

The Honorable George C. Pratt
U.S. Courthouse
Uniondale Avenue at Hempstead Turnpike
Uniondale, New York 11533

The Honorable John S. Martin, Jr.
U.S. Courthouse
40 Foley Square
New York, New York 10007

on or before 5:00 p.m. on June 26, 1992.

/s/ Sterling Johnson Jr.
United States District Judge

Brooklyn, New York
June 19, 1992

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

---X

PUERTO RICAN LEGAL DEFENSE AND EDUCATION FUND, INC., AND EVELYN CORCHADO,

Plaintiffs,

-against-

92 Civ. 1521 (SJ)

DAVID GANTT, Co-Chairman of the New York State Legislative Task Force on Demographic Research and Reapportionment; DEAN SKELOS, Co-Chairman of the New York State Legislative Task Force on Demographic Research and Reapportionment; NEW YORK STATE TASK FORCE ON DEMOGRAPHIC RESEARCH AND REAPPORTIONMENT; SAUL WEPRIN, Speaker of the Assembly of the State of New York; RALPH MARINO, Majority Leader of the New York State Senate; MARIO CUOMO, Governor of the State of New York; STANLEY LUNDINE, Lieutenant Governor of the State of New York; THE SENATE OF THE STATE OF NEW YORK; THE ASSEMBLY OF THE STATE OF NEW YORK; THE BOARD OF ELECTIONS OF THE STATE OF NEW YORK,

Defendants.

AFFIDAVIT

---X

MICHAEL T. WARING,

Plaintiff,

- against -

DAVID GANTT, Individually and as Co-Chairman of the Legislative Task Force on Demographic Research and Reapportionment; DEAN SKELOS, Individually and as Co-Chairman of the Legislative Task Force on Demographic Research and Reapportionment; THE NEW YORK STATE LEGISLATIVE TASK FORCE ON DEMOGRAPHIC RESEARCH AND REAPPORTIONMENT; THE SENATE OF THE STATE OF NEW YORK; THE ASSEMBLY OF THE STATE OF NEW YORK; THE BOARD OF ELECTIONS OF THE STATE OF NEW YORK; RONALD STARKWEATHER, Individually and as Commissioner of the Board of Elections of the County of Monroe; M. BETSY RELIN, Individually and as Commissioner of the Board of Elections of the County of Monroe,

Defendants.

92 Civ. 1776 (SJ)

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

GREGG M. MASHBERG, being duly sworn, states:

1. I am a member of Proskauer Rose Goetz & Mendelsohn, co-counsel for defendants Marino, Skelos and the New York State Senate (the "Moving Defendants").

2. This affidavit is submitted in support of the Moving Defendants' motion to withdraw their April 21, 1992 motion for an order enjoining further proceedings in the action entitled *Reid, et al., v. Marino, et al.*, index no. 9567/92, pending in the Supreme Court of the State of New York for the County of Kings (the "State Court Action"). A copy of the order to show cause relating to the April 21 motion is annexed as Exhibit A.

3. In light of the intervening events since the April 21, 1992 filing of Moving Defendants' motion for an order enjoining the State Court Action, it is no longer necessary for the issues raised in that motion to be entertained.

4. On May 13, 1992, the United States Supreme Court stayed the portion of this Court's May 5, 1992, Order that enjoined the parties and counsel from proceeding in the State Court Action. A copy of this Court's May 5, 1992 Order is attached hereto as Exhibit B. The matter remains pending before the United States Supreme Court.

5. The State Court Action has proceeded, and on June 8, 1992, the state court adopted a congressional reapportionment plan for the State of New York (the "State Plan").

6. The State Legislature approved bills adopting the State Plan and governor Cuomo signed the bills on June 12, 1992.

7. The State Plan was submitted to the Justice Department for preclearance under Section 5 of the Voting Rights Act on June 17, 1992.

8. On June 11, 1992, this Court issued an order adopting the congressional reapportionment plan submitted by the special master (the "Federal Plan"). A copy of this Court's June 11, 1992 Order is attached hereto as Exhibit C.

9. This Court further ordered, however, that the Federal Plan would be implemented only if the States Plan does not receive preclearance under Section 5 of the Voting Rights Act from the United States Justice Department by July 8, 1992.

10. Because the State Court Action has now been fully adjudicated, the application underlying this Court's order enjoining the State Court Action has become moot. Moving Defendants are advising the United States Supreme Court that, in their view, the appeal from this Court's May 5 order is moot and, further, that they are making this motion.

11. Accordingly, Moving Defendants respectfully request that this Court grant this motion to withdraw their motion for an order enjoining the State Court Action.

12. This application is brought by Order to Show Cause due to the pressing time deadlines required for the implementation of a lawful congressional redistricting plan for the 1992 elections and the pendency of this matter before

the United States Supreme Court. No prior request for the relief requested herein has previously been made.

/s/ Gregg M. Mashberg
Gregg M. Mashberg

Sworn to before me
this 19 day of June, 1992.

/s/ Jean T. Bagdonas
Notary Public

JEAN THERESA BAGDONAS
Notary Public State of New York
No. 4957029
Qualified in Kings County
Commission Expires Oct. 2, 1992

